IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No. 182 of 1989
Date of decision : 6 -9-2006

Tola Ram and another … Appellants

Versus

Dev Dutt and others . … Respondents

CORAM:- HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. C.B.Goel, Advocate
for the appellants.

…

ARVIND KUMAR, J:

In this appeal, challenge is to award dated 8.11.1988 whereby claimants have been allowed compensation on account of death of Jai Lal in motor vehicle accident which took place on 22.11.1986.

In brief, the facts are that on 22.11.1986 at about 7 PM, deceased Jai Lal was coming on his motor cycle bearing registration No.HRG-3798 from Gurgao~n to his village Sadharna, when a tempo bearing registration No.HRD-5365 driven by Tola Ram, respondent No.1 (appellant herein) came at a high speed in a rash and negligent manner and struck against his motor cycle from the front side. As a result thereof, Jai Lal fell down and received injuries resulting in his death at the spot. The matter was reported to the police whereafter an FIR was registered. His legal heirs, namely, his widow, five sons and parents filed claim petition claming compensation on account of death of Jai Lal.

Upon notice of the claim petition, respondents(appellants herein), namely, driver and owner of the tempo, who are son and mother, filed written statement controverting the averments made in the claim

petition. It was pleaded that the accident took place due to rash and negligent driving of deceased Jai Lal himself as he was driving the motor-cycle at a high speed and was under the influence of alcohal.

Necessary issues were framed by the Tribunal whereupon the parties led their respective evidence.

The learned Tribunal on appreciation of evidence so led by the parties, allowed the claim petition and granted compensation to Rs.96,000/- to the claimants along with 12 per cent per annum interest. Out of the said amount, the widow and five sons of the deceased were held entitled to receive Rs.15,000/- each while the parents of the deceased were to get Rs.3000/- each. Feeling aggrieved, the respondents, namely, driver and owner of the offending tempo, have assailed the award of the Tribunal.

Learned counsel for the appellants have been heard.

In this case, the accident is not in dispute. The only argument of counsel for the appellants is that the negligence was of the deceased,motor-cyclist, only and as such, they are not liable to pay any compensation. The argument has been developed mainly on the statement of RW-1 Tola Ram, driver of the auto-rickshaw. There is no merit in this contention. The case mainly rests on the statement of AW-1 Rajinder Kumar, an eye-witness. His evidence suggests that Jai Lal, motor-cyclist, was on the correct side of the road whereas the three-wheeler No.HRD-5365 which had come from Pataudi side, driven by Tola Ram, and hit against the motor-cycle thereby causing the said unfortunate accident resulting in death of Jai Lal, motor-cyclist. No doubt, as per his version, one Parveen Kumar an d Des Raj had also witnessed the accident but non-examination of the said witnesses does not affect the case of the claimants in any manner. It is the quality of evidence and not the quantity of evidence that matters. AW-1 Rajinder Kumar is an independent witness. He has no axe to grind. He is the author of the FIR which was lodged with utmost promptness on that day itself narrating the complete sequence of events. Prompt lodging of FIR rules out every possibility of consultations and deliberations. Concededly, the case had been registered against Tola Ram. Had it been a false case, it was expected of him to move representation to the higher Authorities about the registration of a false case but inaction on his part raises an adverse inference to his said plea. Admittedly, he is facing trial in relation to the

present accident. There is, thus, strong presumption of his having caused the accident. In back-drop of this evidence, the Tribunal has rightly held negligence of Tola Ram, driver of auto-rickshaw.

While granting compensation, the income of the deceased has been taken equivalent to an ordinary labourer, i.e. Rs.750/- and after deducting 1/3rd on account of personal expenses the dependency has been assessed at Rs.500/- per month which in my considered view, has rightly been held by the Tribunal. Accordingly, the finding recorded by the Tribunal in this regard needs no interference.

Consequently, there is no merit in this appeal which is hereby dismissed. No costs.

(ARVIND KUMAR)
JUDGE

September 6, 2006

JS